



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *H. M. v. Minister of Employment and Social Development*, 2018 SST 635

Tribunal File Number: AD-18-232

BETWEEN:

H. M.

Applicant

and

Minister of Employment and Social Development

Respondent

and

The Estate of A. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: June 14, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] The Applicant, H. M., applied for an Old Age Security (OAS) pension on October 9, 2013. However, her application was refused by the Respondent, the Minister of Employment and Social Development (Minister), initially and upon reconsideration. The Minister submits that the Applicant did not meet the minimum residency requirement to be eligible for a partial OAS pension.

[3] The Applicant appealed the reconsideration decision to the General Division, but the appeal was dismissed in January 2018 after a teleconference hearing and written submissions.

[4] Before the matter can go any further, the Applicant needs permission to appeal the General Division decision. Leave is granted for the following reasons.

ISSUE

[5] Is there an arguable case that the General Division committed a significant error with regard to the facts by rejecting the Applicant's appeal?

ANALYSIS

Legal Framework of the Tribunal

[6] At the Appeal Division, the emphasis is on determining whether the General Division committed at least one of the three reviewable errors (grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In general terms, did the General Division commit one of the following errors:

- a) failing to observe a principle of natural justice or otherwise err in jurisdiction;

- b) erring in law; or
- c) basing its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it?

[7] Most appeals to the Appeal Division must follow a two-stage process: the leave to appeal stage and the hearing on the merits stage. This appeal is currently at the leave to appeal stage, which means that the Tribunal must grant permission for the appeal to continue. This preliminary step is intended to filter out appeals that have no reasonable chance of success.¹ At this point, applicants have a minimal legal test to meet: is there any arguable ground on which the appeal might succeed?²

Is there an arguable case that the General Division committed a significant error with regard to the facts by rejecting the Applicant’s appeal?

[8] In support of her application, the Applicant contends that a significant amount of the evidence submitted to the General Division should have been interpreted in her favour. On this subject, she argues that the General Division did not interpret the facts in an objective fashion or in a factual or cultural context.

[9] The General Division is authorized to prefer certain pieces of evidence over others. It is not the Appeal Division’s role to reassess or reweigh the evidence to reach a different conclusion.³ However, the General Division can err if it does not fulfill its obligation to perform a meaningful analysis of the evidence or explain how it chose between two contradictory pieces of evidence.⁴

[10] On one hand, the following conclusions are noted in the General Division decision:

- a) at paragraph 18: “the evidence is very clear [that the Applicant] has no goods or ties, besides her son, in Canada...”;

¹ DESD Act at s. 58(2).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

³ *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

⁴ *Dossa v. Canada (Pension Appeals Board)*, 2005 FCA 387; *Canada (Minister of Human Resources Development) v. Quesnelle*, 2003 FCA 92; *Canada (Attorney General) v. Ryall*, 2008 FCA 164.

- b) at paragraph 19: "... there is no evidence for the Tribunal to decide, based on the criteria of the jurisprudence and the applicable law that [the Applicant] has resided in Canada since her arrival in May 2001."

[11] On the other hand, the following elements may constitute attachments to Canada:⁵

- a) since 2002, the Applicant has spent the majority of her time in Canada and she has not returned to Morocco since February 2013;
- b) she has produced income tax returns in Canada on a regular basis;
- c) she has health care coverage in Québec and has received medical services in Québec;
- d) she has a bank account in Québec;
- e) she exercises her right to vote in Canada on a regular basis;
- f) she is a member of a Québec-based association;
- g) she uses a cellular telephone in Canada (even though it is in her son's name).

[12] Furthermore, the Applicant submits that the attachments that she has maintained with Morocco have been explained. For example:

- a) the Applicant has three daughters who still live in Morocco who are unmarried and without income;
- b) family support is part of Moroccan culture;
- c) her health insurance coverage in Morocco is part of the benefits to which her husband was entitled as a retired police officer.

[13] Because these points may contradict the General Division conclusions cited above and may constitute important elements that the General Division left aside in its analysis, I believe

⁵ GD22.

that the Applicant has raised an arguable ground upon which the appeal has a chance of success under s. 58(1)(c) of the DESD Act.

Next Step: Hearing on the Merits

[14] Though I have found that there is an arguable ground on which the appeal might succeed, this decision does not presume the results of the second step of the process: the hearing on the merits.

[15] At this second stage, the Applicant must establish that it is more likely than not that the General Division committed at least one of the errors set out in s. 58 of the DESD Act. This second obstacle is a higher hurdle than the one that she has just met.

[16] Because leave is granted, the parties now have the opportunity to provide submissions on the merits of the appeal. In these submissions, the parties are invited to address the following points:

- a) Among the options for remedy under s. 59(1) of the DESD Act, which is the most appropriate remedy on the facts of this case?
- b) Should the Appeal Division schedule a hearing at the second stage of this process? For example, the Tribunal could conduct a hearing by teleconference, by videoconference, or in person.

CONCLUSION

[17] The application for leave to appeal is granted.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	Julie Ouimet, for the Applicant
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